1 2 3 4 5 6 7 8		DISTRICT COURT
9	DISTRICT OF NEVADA	
10	FRANK J. SWEETZ, a single man,	CASE NO. 2:08-cv-01604-JCM-RJJ
11	Plaintiff,	
12	vs.	ORDER ON CONCEPT CONSTRUCTION
13	MOTEL 6 OPERATING L.P., a foreign	& DEVELOPMENT, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN
14	Limited Partnership, ACCOR NORTH AMERICA, INC., GENERAL	THE ALTERNATIVE, FOR AN ADVERSE INFERENCE AGAINST
16	PARTNERSHIP d/b/a "MOTEL 6";	THIRD-PARTY PLAINTIFFS MOTEL 6 OPERATING, L.P. AND ACCOR NORTH
17	LIBERTY MUTUAL INSURANCE GROUP) a/k/a LIBERTY MUTUAL INSURANCE COMPANY; DOES I through X, inclusive,	AMERICA, INC.
18 19	Defendants.	
20		
21	MOTEL 6 OPERATING L.P., and ACCOR NORTH AMERICA, INC.,	
22	Third-Party Plaintiffs,	
23	vs.	
24)	
25	CONCEPT CONSTRUCTION &) DEVELOPMENT, INC.,	
26	Third-Party -Defendant.	
27		
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ORDER ON CONCEPT CONSTRUCTION & DEVELOPMENT, INC.'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, FOR AN ADVERSE INFERENCE AGAINST THIRD-PARTY PLAINTIFFS MOTEL 6 OPERATING, L.P. AND ACCOR NORTH AMERICA, INC.

Third-Party Defendant CONCEPT CONSTRUCTION & DEVELOPMENT, INC.'s (hereinafter "Concept Construction") Motion for Summary Judgment or, in the Alternative, for an Adverse Inference having come on regularly for hearing on Monday, June 21, 2010, at 10:00 a.m., the Honorable United States District Court Judge James C. Mahan presiding. Jonathan D. Blum, Esq. of THARPE & HOWELL, LLP appeared on behalf of Third-Party Plaintiffs MOTEL 6 OPERATING, L.P. and ACCOR NORTH AMERICA, INC. (hereinafter collectively referred to as "Motel 6"), and Nathaniel G. Hannaford, Esq. of McKAY LAW FIRM, CHTD. appeared on behalf of Third-Party Defendant Concept Construction.

After reviewing the Memorandum of Points and Authorities and hearing oral arguments of counsel in support of and in Opposition to Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference, and after being fully advised in the premises and good cause appearing therefore, the Court now Orders as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference against Third-Party Plaintiffs Motel 6 is **DENIED**, **IN PART**, as it relates to Concept Construction's request for Summary Judgment and the exclusion of Motel 6's expert, Lane Swainston. Accordingly, Summary Judgment is hereby denied. Likewise, Concept Construction's request that Motel 6's expert witness, Lane Swainston, be precluded from offering testimony is also denied.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Concept Construction's Motion for Summary Judgment or, in the Alternative, for an Adverse Inference against Third-Party Plaintiffs Motel 6 is **GRANTED**, **IN PART**, in that Concept Construction is entitled to a Permissible Adverse Inference Jury Instruction relating to the spoliation of evidence that is the subject of this Motion.

1 IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the 2 language permitted in the Permissible Adverse Inference Jury Instruction will be reviewed and 3 approved by the Court following the submission of proposed jury instructions by the parties at 4 the appropriate time before trial. 5 IT IS SO ORDERED, ADJUDICATED AND DECREED July 1, 2010. 6 7 8 UNITED STATES DISTRICT JUDGE 9 Submitted by: 10 11 McKAY LAW FIRM, CHTD. 12 /s/ Nathaniel G. Hannaford 13 By: 14 NATHANIEL G. HANNAFORD State Bar No. 7733 15 3295 North Fort Apache Rd, Suite 150 Las Vegas, NV 89129 16 17 Attorneys for Third-party Defendant, **CONCEPT CONSTRUCTION &** 18 DEVELOPMENT, INC. 19 Approved as to Form and Content by: 20 THARPE & HOWELL, LLP 21 /s/ Jonathan D. Blum 22 By: 23 JONATHAN D. BLUM State Bar No. 9515 24 3425 Cliff Shadows Pkwy, Suite 150 Las Vegas, NV 89129 25 26 Attorneys for Third-Party Plaintiffs, MOTEL 6 OPERATING, L.P. and 27 ACCOR NORTH AMERICA, INC. 28